

JUDGE HOLWELL

08 CV 7139

Martin F. Casey (MFC-1415)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HYUNDAI FIRE & MARINE INSURANCE CO.
LTD. a/s/o S AND J INTERNATIONAL CORP.,

Plaintiff,

- against -

SUN OCEAN LOGISTICS CORP.,

Defendant.
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2008 Civ.

COMPLAINT



Plaintiff, by its attorneys, CASEY & BARNETT, LLC, for its Complaint, alleges upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333.

2. At all material times, HYUNDAI FIRE & MARINE INSURANCE CO. LTD. (hereinafter "Hyundai" or "Plaintiff") was and is a foreign corporation duly organized and operating under the laws of South Korea, with an office and place of business located at Bldg 178, Sejong-Ro Jongro-Gu, Seoul, 110-731, South Korea, and is subrogated underwriter of a consignment of steel pipes shipped aboard the M/V COSCO BUSAN, as more fully described below.

3. At all material times, S AND J INTERNATIONAL CORP. (hereinafter "S&J") was and is a foreign corporation duly organized and operating under the laws of South Korea, with an office and place of business located at 4F, 187-55, Daejo-Dong, Bunpyung-Ku, Seoul South Korea and was the consignee, owner and/or assured of the consignment hereinbelow described.

4. At all material times, defendant, SUN OCEAN LOGISTICS CORP., (hereinafter "Sun Ocean") was and is a business entity with an office and place of business located at 5250 W. Century Blvd., Suite 530, Los Angeles, California 90045 and at all relevant times was and is doing business within the jurisdiction of this Honorable Court as a non-vessel owning common carrier (nvocc).

5. Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

AS AND FOR A FIRST CAUSE OF ACTION

6. On or about September 26, 2007, a consignment consisting of 39 bales of fabric, then being in good order and condition, was delivered to defendant at the port of Shanghai, China for transportation to Laredo, Texas, U.S.A. via the port of Long Beach, California, in consideration of an agreed freight and pursuant to Sun Ocean bills of lading numbered SOSBLRDSW7092388 and SOSBLRDSW7092389 dated September 26, 2007.

7. Thereafter, the aforementioned consignment was loaded aboard the M/V COSCO BUSAN, Sun Ocean bills of lading numbered SOSBLRDSW7092388 and SOSBLRDSW7092389 were issued, and the vessel sailed for the intended port of destination.

8. On or about October 10, 2007, the vessel arrived at the port of Long Beach, California, where the cargo was transshipped for onward delivery in a 53-foot trailer at Laredo, Texas.

9. After departure from the port of Long Beach, California and on or about October 13, 2007, the truck and trailer of cargo were stolen.

10. The shipment was later recovered, placed into a different trailer and redirected to Laredo, Texas.

11. During the transshipment into the new trailer, it was discovered that the cargo had suffered a shortage.

12. The loss to the aforementioned cargo was not the result of any act or omission of the plaintiff but, to the contrary, was due solely as the result of the negligence, fault, neglect, breach of contract of carriage and breach of bailment on the part of the defendant.

13. By reason of the foregoing, plaintiff has been sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be no less than \$10,593.60.

14. At all times relevant hereto, a contract of insurance for property damage was in effect between S&J and Hyundai, which provided coverage for, among other things, loss or damage to the consignment.

15. Pursuant to the aforementioned contract of insurance between S&J and Hyundai, monies have been expended on behalf of S&J to the detriment of Hyundai due to the damages sustained during transit.

16. As Hyundai has sustained damages as a result of said expenditures, expenditures rightly the responsibility of the defendants, Hyundai has an equitable right of subrogation and is subrogated, to the extent of its expenditures, to the rights of its insured with respect to any and all claims for damages of against the defendants.

17. Plaintiff and its predecessors in title have performed all of the conditions precedent on their part to be performed under the terms of the said contract.

AS FOR A SECOND CAUSE OF ACTION – CONVERSION

18. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs 1 through 17 inclusive, as if herein set forth at length.

19. As a result of the damages sustained during transit, a check was issued by the trucker's insurance carrier on December 12, 2007 in the amount of \$21,967.30 payable to Sun Ocean Logistics Corp. based upon a claim Sun Ocean Logistics submitted on behalf of the cargo owner.

20. Despite due demand, defendant has refused to remit said payment to its rightful owner. To the contrary, defendant Sun Ocean Logistics has converted the moneys to its own use.

WHEREFORE, Plaintiff prays:

1. The Court order, adjudge and decree that defendant, SUN OCEAN LOGISTICS CORP., be found liable and pay to plaintiff the losses sustained herein, together with pre-judgment interest thereon, costs and attorneys' fees.
2. That this Court grants to plaintiff such other and further relief as may be just and proper.

Dated: New York, New York
August 11, 2008
101-67

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